



August 7, 2001

Mr. Edward M. Sosa
Chief Legal Officer
El Paso County
4815 Alameda
El Paso, Texas 79905

OR2001-3434

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150425.

R.E. Thomason General Hospital (the "hospital"), owned and operated by the El Paso County Hospital District, received a request for information regarding complaints, lawsuits, and settlements concerning nosocomial infections as well as information regarding the nosocomial infection rate at the hospital. You indicate that you have released information to the requestor in response to the request for information regarding lawsuits and settlements. However, you claim that the requested information regarding patient complaints and the nosocomial infection rate at the hospital is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 161.032(a) of the Health and Safety Code provides:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. ... Records, information, or reports of a medical committee ... and records, information, or reports provided by a medical committee ... to the governing body of a public hospital ... are not subject to disclosure under Chapter 552, Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

....

(c) This section ... do[es] not apply to records made or maintained in the regular course of business by a hospital

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “medical committee” includes any committee, including a joint committee, of ... a hospital” Health & Safety Code § 161.031(a). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization ... may form ... a medical committee, as defined by section 161.031, to evaluate medical and health care services” Health & Safety Code § 161.0315(a).

You state that the submitted information on nosocomial infection rates at the hospital is prepared for the hospital’s Infection Control Committee. You further state that the infection rate information is used to reduce disease transmission and further the goals of the hospital’s Infection Control Program. With respect to the submitted report on a patient complaint,² you indicate that the Hospital Patient Satisfaction Committee maintains the report in connection with the hospital’s overall program for quality improvement. Based on your arguments and our review of the submitted information, we agree that the submitted information is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²We note that you have redacted portions of the submitted complaint report. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. By totally obliterating portions of the complaint report, you made it impossible for this office to review those portions of the report. You thus failed to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 will result in a decision that the requested information is public and must be released in its entirety. *See* Gov’t Code §§ 552.006, .301(e), .302.

³Based on our finding, we need not reach your remaining argument for withholding the information.

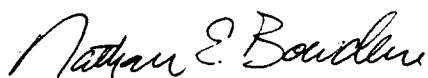
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 150425

Enc: Submitted documents

c: Ms. Christina Brown
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(w/o enclosures)